

James W. Lurtz  
210 S Main Street  
Crown Point IN 46307

Permit #RR&SS45-97330  
District 1

**PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**I.**

**BACKGROUND OF THE CASE**

The Applicant, James W. Lurtz, d/b/a Sidepockets, 210 S Main Street, Crown Point, IN 46307 ("Applicant"), filed its application for transfer of location of a 210 and for a new type 220 Sunday sales Alcohol and Tobacco Commission ("ATC") permit, permit #RR45-97330. The ATC assigned the application before the Lake County Local Board ("LB"). The LB conducted its investigation and hearing regarding these applications and voted to recommend denial of both, citing 7.1-3-21-11, location in proximity to church. That was done at its July 3, 2002 meeting and the ATC at its July 16, 2002 meeting adopted the recommendation of the LB.

The Applicant filed a timely notice of appeal and the matter was set before Hearing Judge Daniel M. Steiner ("HJ"). Attorneys Robert Kuzman and Stephen Nicholls of Crown Point, Indiana represented the Applicant. The remonstrators were not present. At that time, the Applicant was sworn and the matter was taken under advisement. At this time the HJ submits his Proposed Findings of Fact and Conclusions of Law to the ATC for its consideration.

**II.**

**EVIDENCE AT THE HEARING**

**A.**

**WITNESS**

The following witness was sworn and provided testimony at the appeal hearing:

1. James W. Lurtz ("J. Lurtz"), the Applicant. He stated he is the owner of this permit and business, that he has never received a citation of violation of ATC law, and that his business does qualify for an exception under IC 7.1-3-20-16.5 to the proximity rule, in that the location is within a recognized historic district in Crown Point, Indiana. Mr. Lurtz also testified that since the denial

of transfer of location and Sunday sales that his renewal application has been granted by the LB.

B.  
EXHIBIT

The following exhibit was offered and admitted at the ATC appeal hearing:

1. Applicant's Exhibit E, consisting of a copy of Ordinance 1919 of the city of Crown Point, Indiana, said exhibit being in four (4) parts. Exhibit was admitted without objection.

III.  
PROPOSED FINDINGS OF FACT

1. The Applicant, James W. Lurtz, d/b/a Sidepockets, 210 S Main Street, Crown Point, IN 46307, is the holder of a type 210 ATC permit, permit #RR45-97330 and is the Applicant for a transfer of location and a new Sunday sales accompanying said permit. (ATC file)
2. That the LB recommended that the application for the transfer of location and the Sunday sales, type 220 permit, be denied because of their proximity to a church in their area. (record of LB proceedings)
3. That the evidence is by documentary evidence, that consisting of Applicant's Exhibit E, admitted at the ATC appeal hearing and submitted to the ATC in the form of a previously written communication that the proposed location herein is within an historic district of the city of Crown Point, Indiana. (ATC appeal hearing and ATC file)
4. That IC 7.1-3-20-16.5 provides as follows:
  - (a) A permit that is authorized by this section:
    - (1) is subject to the quota provisions of IC 7.1-3-22; and
    - (2) is not subject to the proximity provisions of IC 7.1-3-21-11.
  - (b) The commission may issue a retailer's permit to the proprietor of a restaurant that is located in a facility that is on the National Register of Historic Places and is located within the boundaries of an historic district that is established by ordinance pursuant to IC 36-7-11-7. (IC 7.1-3-20-16.5)
5. IC 7.1-3-21-11, states in relevant part, (b) except as provided in (c), the commission shall not issue a permit for a premises if a wall of the premises is situated within 200 feet of a wall of a church or school if no permit has been

issued for the premises under the provision of Acts 1933, chapter 80. (IC 7.1-3-21-11)

6. That the uncontroverted evidence is that the proposed premises applied for herein is within an historic district as defined in the city of Crown Point, Indiana, and there is no substantial evidence to indicate that there is or has been a finding by the LB regarding the need for the Sunday sales, type 220 permit, which would attach to this permit. (LB hearing, ATC appeal hearing and ATC file)
7. Finally, the Applicant has attached a letter purportedly from the initial remonstrators, James D. Smith and Sherry A. Nagel-Smith, stating that they wish to withdraw their remonstrance to the application for transfer of this permit. (ATC file)
8. Any conclusion of law included in the foregoing findings of fact shall be deemed part of the ATC conclusions of law.

#### IV. CONCLUSIONS OF LAW

1. The Applicant, James W. Lurtz, d/b/a Sidepockets, 210 S. Main Street, Crown Point, Indiana, 46307, is the applicant for transfer of location of a type 210 ATC permit, permit RR45-97330, and Applicant for a type 220 ATC Sunday sales permit, of the same number. (ATC file)
2. The LB recommended this application be denied for the reason that it is in proximity to a church. However, the only reasonable conclusion to be reached based on the evidence, is that even though this premises may be within 200 feet of a church, the provisions of IC 7.1-3-20-16.5 provide for an exception to the proximity statute and this particular proposed premises meets the provisions of that statute.
3. The weight of the evidence is conclusively that there is a need for the services applied for at this location and that this proposed location is not prohibited by any proximity statutes or rules within Title 7.1 or IC 905.
4. Therefore the recommendation of the LB to deny these applications must fail for the reasons it is not in accordance with law and is unsupported by substantial evidence. IC 7.1-3-19-11
5. Any finding of fact concluded in the foregoing conclusions of law shall be deemed part of the ATC finding of fact.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the recommendation of the LB to deny the transfer of location of this permit and the proposed type 220 Sunday sales permit at the proposed premises should be and the same

hereby is reversed and the permits applied for herein at 210 S Main Street, Crown Point, Indiana 46307, are hereby granted.

Date \_\_\_\_\_

\_\_\_\_\_  
Daniel M. Steiner, Hearing Judge